

ESTTA Tracking number: **ESTTA350542**

Filing date: **06/02/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Cornucopia Beverages, Inc.
Granted to Date of previous extension	06/02/2010
Address	One Executive Drive, Suite 330 Bedford, NH 03110 UNITED STATES

Attorney information	David L. May Nixon Peabody LLP 401 9th Street, N.W., Suite 900 Washington, DC 20004 UNITED STATES dmay@nixonpeabody.com, lgolden@nixonpeabody.com, was.managing.clerk@nixonpeabody.com, nptm@nixonpeabody.com Phone:202-585-8000
----------------------	---

### Applicant Information

Application No	77821956	Publication date	02/02/2010
Opposition Filing Date	06/02/2010	Opposition Period Ends	06/02/2010
Applicant	MGA Entertainment, Inc. 16380 Roscoe Boulevard Van Nuys, CA 91406 UNITED STATES		

### Goods/Services Affected by Opposition

Class 028.


All goods and services in the class are opposed, namely: TOYS, GAMES AND PLAYTHINGS, NAMELY, ACTION FIGURES AND PLAYSETS THEREFOR, ACTION SKILL GAMES, ARCADE GAMES, ATHLETIC PROTECTIVE PADS, NAMELY, ARM PADS, KNEE PADS, ELBOW PADS AND WRIST PADS FOR CYCLING, SKATING AND SKATEBOARDING, BALLOONS, BASEBALLS, BASEBALL GLOVES, BASKETBALLS, BEACH BALLS, BEAN BAG DOLLS, BOARD GAMES, BODY BOARDS, CARD GAMES, CHILDREN'S PLAY COSMETICS, CHRISTMAS TREE ORNAMENTS, EXCEPT CONFECTIONERY OR ILLUMINATION ARTICLES, CRAFT SETS FOR DECORATING BALLOONS, DOLLS, DOLL CLOTHING, DOLL ACCESSORIES, FLYING DISCS, FOOTBALLS, HAND HELD UNIT FOR PLAYING ELECTRONIC GAMES OTHER THAN THOSE ADAPTED FOR USE WITH EXTERNAL SCREENS OR MONITORS, IN-LINE SKATES, KITES, MOBILES FOR CHILDREN, PARTY FAVORS IN THE NATURE OF CRACKERS AND NOISEMAKERS, PLAYGROUND BALLS, PLAYING CARDS, PUZZLES, ROLLER SKATES, SKATEBOARDS, SKIM BOARDS, SNOW SLEDS FOR RECREATIONAL USE, SOCCER BALLS, SWIM FLOATS FOR RECREATIONAL USE, SWIM FINNS, TOY ACTION FIGURES AND ACCESSORIES THEREFOR, TOY VEHICLES AND PLAYSETS THEREFOR, TOY SCOOTERS,


VOLLEYBALLS, WATER WING SWIM AIDS FOR RECREATIONAL USE, WIND-UP TOYS, AND YO-YOS

## Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Likelihood of confusion, mistake and/or deception among consumers within the meaning of Trademark Act Â§ 43(a), 15 U.S.C. Â§ 1125(a).

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	189066	Application Date	03/23/1923
Registration Date	09/09/1924	Foreign Priority Date	NONE
Word Mark	MOXIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U045 (International Class 032). First use: First Use: 1885/00/00 First Use In Commerce: 1885/00/00 NONALCOHOLIC, MALTLESS CARBONATED BEVERAGE AND SIRUP FOR MAKING THE SAME		

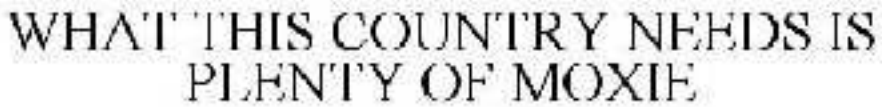
U.S. Registration No.	1460942	Application Date	12/17/1986
Registration Date	10/13/1987	Foreign Priority Date	NONE
Word Mark	MOXIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25		


	MUGS Class 025. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 T-SHIRTS Class 028. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [ HAND TOYS-NAMELY, YO-YOS ] Class 030. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [ BREAKFAST CEREAL ]
--	---

U.S. Registration No.	1460943	Application Date	12/17/1986
Registration Date	10/13/1987	Foreign Priority Date	NONE
Word Mark	MOXIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 MUGS Class 025. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 T-SHIRTS Class 028. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [ HAND TOYS-NAMELY, YO-YOS ] Class 030. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 [ BREAKFAST CEREAL ]		


U.S. Registration No.	1465569	Application Date	12/17/1986
Registration Date	11/17/1987	Foreign Priority Date	NONE
Word Mark	WHAT THIS COUNTRY NEEDS IS PLENTY OF MOXIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1986/08/25 First Use In Commerce: 1986/08/25 T-SHIRTS		


U.S. Registration No.	3679783	Application Date	04/14/2009
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	WHAT THIS COUNTRY NEEDS IS PLENTY OF MOXIE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 2003/07/01 First Use In Commerce: 2003/07/01 Bumper stickers

U.S. Registration No.	3679784	Application Date	04/14/2009
Registration Date	09/08/2009	Foreign Priority Date	NONE
Word Mark	MOXIE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1995/01/01 First Use In Commerce: 1995/01/01 Magnets		

U.S. Registration No.	3766342	Application Date	03/26/2009
Registration Date	03/30/2010	Foreign Priority Date	NONE
Word Mark	MOXIE		

Design Mark	
Description of Mark	The mark consists of the word "MOXIE" in stylized font with an exaggerated letter "X".
Goods/Services	Class 032. First use: First Use: 2008/10/16 First Use In Commerce: 2008/10/20 Fruit-flavored beverages; Non-alcoholic beverages, namely, carbonated beverages; Soft drinks, namely, carbonated soft drinks

U.S. Registration No.	3570807	Application Date	01/26/2006
Registration Date	02/03/2009	Foreign Priority Date	NONE
Word Mark	MOXIE ENERGY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2008/10/16 First Use In Commerce: 2008/10/20 carbonated soft drinks		

Attachments	71178054#TMSN.gif ( 1 page )( bytes ) 73635852#TMSN.gif ( 1 page )( bytes ) 77713237#TMSN.jpeg ( 1 page )( bytes ) 77713246#TMSN.jpeg ( 1 page )( bytes ) 77700157#TMSN.jpeg ( 1 page )( bytes ) 78800015#TMSN.jpeg ( 1 page )( bytes ) Notice_of_Opposition--MOXIE_TEEN.pdf ( 5 pages )(12077 bytes )
-------------	--

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ldg5x/
Name	Laura D. Golden
Date	06/02/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of:

Application Serial No. 77/821,956

Mark: MOXIE TEEN

Published in the Official Gazette: February 2, 2010

	)	
CORNUCOPIA BEVERAGES, INC.,	)	
	)	
Opposer,	)	
v.	)	Opposition No. _____
	)	
MGA ENTERTAINMENT, INC.	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Opposer, Cornucopia Beverages, Inc., a corporation organized under the laws of New Hampshire having a business address at One Executive Park Drive, Suite 330, Bedford, New Hampshire, 03110, hereby opposes registration of the mark MOXIE TEEN that is the subject of U.S. Trademark Application Serial No. 77/821,956, published on February 2, 2010 (“the ‘956 application”), and requests that registration to Applicant be refused.

This Notice of Opposition is timely filed pursuant to a 90-Day Request for Extension of Time to Oppose for Good Cause, which was filed by Opposer on March 3, 2010, and granted by the Board on the same. As grounds in support of its opposition, Opposer asserts as follows:

*I.* Opposer is the owner of the entire right, title and interest in and to, *inter alia*, U.S. Trademark Registration Nos. 189066, 1460942, 1460943, 1465569, 3679783, 3679784, 3766342, and 3570807, all of which registrations are valid, subsisting, unrevoked, and uncanceled (the “MOXIE Marks”).

2. Opposer, and Monarch Beverages, its predecessor in interest, have actively, continuously, and consistently promoted its goods and related services under the MOXIE Marks, and have used the MOXIE Marks in U.S commerce since long prior to the filing date of the '956 application, or any date of first use upon which Applicant can rely.

3. As a result of extensive use and advertising, and the high quality of Opposer's goods, the MOXIE Marks have become well known and are associated with valuable and substantial goodwill.

4. On September 8, 2009, Applicant filed U.S. Application Serial No. 77/821,956 for registration of the mark MOXIE & Design (as shown below) (the "Opposed Mark") for use in connection with *toys, games and playthings, namely, action figures and playsets therefor, action skill games, arcade games, athletic protective pads, namely, arm pads, knee pads, elbow pads and wrist pads for cycling, skating and skateboarding, balloons, baseballs, baseball gloves, basketballs, beach balls, bean bag dolls, board games, body boards, card games, children's play cosmetics, Christmas tree ornaments, except confectionery or illumination articles, craft sets for decorating balloons, dolls, doll clothing, doll accessories, flying discs, footballs, hand held unit for playing electronic games other than those adapted for use with external screens or monitors, in-line skates, kites, mobiles for children, party favors in the nature of crackers and noisemakers, playground balls, playing cards, puzzles, roller skates, skateboards, skim boards, snow sleds for recreational use, soccer balls, swim floats for recreational use, swim fins, toy action figures and accessories therefor, toy vehicles and playsets therefor, toy scooters, volleyballs, water wing swim aids for recreational use, wine-up toys, and yo-yos* in Class 28.



5. Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Application Serial No. 77/821,956, will create a likelihood of confusion, mistake and/or deception among consumers within the meaning of Trademark Act § 2(d), 15 U.S.C. § 1052(d), to the detriment of Opposer.

6. Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Application Serial No. 77/821,956, will create a likelihood of confusion, mistake and/or deception among consumers within the meaning of Trademark Act § 43(a), 15 U.S.C. § 1125(a), to the detriment of Opposer.

7. Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Application Serial No. 77/821,956, will falsely suggest a connection with Opposer within the meaning of Trademark Act § 2(a).

In view of the foregoing, Opposer believes that it has been damaged and will continue to be damaged by virtue of Applicant's registration of the Opposed Mark, as shown in the herein opposed U.S. Trademark Application Serial No. 77/821,956.

WHEREFORE, Opposer prays that this Opposition be sustained and U.S. Application Serial No. 77/628,891 be denied and refused.

Respectfully submitted,

**NIXON PEABODY LLP**

Dated: June 2, 2010

By: /david l. may/

David L. May, Esq.

Laura D. Golden, Esq.

401 9<sup>th</sup> Street, N.W.

Suite 900

Telephone: (202) 585-8000

Fax: (202) 585-8080

Attorneys for Opposer

Cornucopia Beverages, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Opposition was served on June 2, 2010, via first-class mail, postage prepaid, on the following:

Sam Khare  
MGA Entertainment, Inc.  
16380 Roscoe Boulevard  
Van Nuys, CA 91406

/Laura D. Golden/  
Laura D. Golden